UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/608
1 July 1993

ENGLISH
ORIGINAL: FRENCH

ADMINISTRATIVE TRIBUNAL

Judgement No. 608

Case No. 654: PENNACCHI Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Hubert Thierry; Mr. Mikuin Leliel Balanda;

Whereas at the request of Luisa Pennacchi, a former staff member of the United Nations Children's Fund, hereinafter referred to as UNICEF, the President of the Tribunal, with the agreement of the Respondent, extended to 21 February 1992 the time-limit for the filing of an application to the Tribunal;

Whereas, on 17 February 1992, the Applicant filed an application containing the following principal pleas:

"May it please the Administrative Tribunal of the United Nations

...

- To declare null and void the decision of 30 November 1988 to terminate the Applicant's permanent appointment, as confirmed by the decision of 13 April 1989;

Having done that

- To order UNICEF to reinstate the Applicant in her post with tasks corresponding to her professional qualifications;

- To order UNICEF to pay to the Applicant, as costs, fair compensation.

(c) In addition,

- To order UNICEF to pay to the Applicant the sum of 1,306,289.45 Swiss francs as compensation for the material and moral injuries which she has suffered."

Whereas the Respondent filed his answer on 18 June 1992;

Whereas the Applicant filed written observations on 5 August 1992;

Whereas, on 11 June 1993, the Tribunal put questions to the Respondent, to which he replied on 15 June 1993;

Whereas the Tribunal decided, on 23 June 1993, that there would be no oral proceedings in the case;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNICEF as a "Mimeographer" and served on a number of short-term contracts from 5 December 1972 to January 1975. On 2 June 1975, she was recruited on a fixed-term appointment at the G-2, step I level, as a Mimeographer/Messenger in the Administrative Division. She served on a succession of fixed-term appointments until 2 September 1976, when she received a probationary appointment. Her functional title had, with effect from 1 September 1975, been changed to Junior Administrative Services Clerk. On 1 September 1977, the Applicant's appointment became permanent and, on 1 October 1985, she was promoted to the G-3, step VIII level with the functional title of Administrative Services Clerk.

In a Note for the record dated 10 March 1988, the Deputy Director of the UNICEF office in Geneva attested that on 7 March 1988, a meeting was held in the presence of the Director of the office, his deputy, a representative of the UNICEF Geneva Staff Committee and a representative of the Personnel Department. The

Applicant was informed that she was among the staff whose posts were affected by the intended reorganization of the Geneva office and that the following options were open to her: "(a) She may apply for any newly created posts. (b) She may apply for other vacant posts which may arise within the office. (c) She may apply for a field posting. (d) She may apply for a vacant post which may arise within the United Nations system in Geneva ... [and] should this be the case, Management will give full support to her application. (e) She may [receive] an agreed termination."

On 10 March 1988, the Applicant wrcte to the Deputy Executive Director, asking to be assigned to a post in the Greeting Cards Operation, since her family situation did not permit her to remain without work. In a reply dated 24 March 1988, the Deputy Executive Director informed the Applicant that the question of the restructuring of the Geneva office was "ongoing" and that he was not in a position to know, at the time, what the Executive Board's decision would be. However, if the Executive Board should decide to abolish the Applicant's post, her request would be taken into consideration.

On 26 April 1988, an incident took place between the Applicant and another staff member, involving alleged physical violence by the Applicant. As a result of this incident, on 27 April 1988, the Applicant was suspended from service with full pay, pending investigation under staff rule 110.4. The Applicant's case was referred to the Geneva Joint Disciplinary Committee for advice.

A Note for the record, dated 9 May 1988, reports on a meeting held on 6 May 1988 between the Deputy Director, the Applicant, a representative of the UNICEF Geneva Staff Committee and a representative of the Administration, to discuss the decision to suspend the Applicant from service. The Applicant had requested, in a letter dated 2 May 1988, that the "possibility of reaching an amicable agreement" should be envisaged.

The Geneva Joint Disciplinary Committee adopted its report on the incident on 12 September 1988 and recommended to the Secretary-General that the Applicant be given a written censure. On 26 October 1988, the Under-Secretary-General for Administration and Management wrote to the Applicant, conveying the decision of the Secretary-General to suspend her from service without pay for one month, as a disciplinary measure under staff rule 110.3(b). Accordingly, the Applicant was suspended from 1 November until 30 November 1988. She appealed against this decision, which the Secretary-General maintained after having re-examined her case in the light of the Geneva Joint Appeals Board report. The Administrative Tribunal upheld the Secretary-General's decision in its Judgement No. 542.

In a letter dated 30 November 1988, the Deputy Director of the Geneva office, referring to the meeting held on 7 March 1988, informed the Applicant that, upon the recommendation of the Budget and Planning Review Committee which had completed its review of the budgetary estimates concerning the restructuring of the Geneva office, the Executive Director had decided to abolish her post, as well as a number of other posts, as from 1 January 1989. In accordance with paragraph 6 of UNICEF administrative instruction CF/AI/1986-10, dated 26 November 1986, on the subject of personnel policies and procedures applicable to incumbents of posts which are to be abolished, the Applicant would continue to be a UNICEF staff member until 31 May 1989 (representing a period of notice of six months for staff members on permanent appointments). The Deputy Director further informed the Applicant that if, during the six-month period, she could not find another post corresponding to her qualifications within UNICEF or within the United Nations common system, her appointment with UNICEF would be terminated.

On 26 January 1989, the Applicant requested the Secretary-General to review the decision to abolish her post. In this

communication, the Applicant argued essentially that the decision to abolish her post did not appear to be "objectively justified by the necessities of the service but is rather an additional sanction and completely arbitrary, linked to the outcome of the incident of 26 April 1988". In a reply dated 13 April 1989, the Deputy Executive Director informed the Applicant that she saw "no reason to change the decision to abolish [the Applicant's] post as a part of the restructuring plan of the Office in Geneva which was duly approved by the Budget and Planning Review Committee and subsequently by the UNICEF Executive Director". On 17 May 1989, the Applicant lodged an appeal with the Geneva Joint Appeals Board.

On 29 May 1989, the Deputy Director of UNICEF Geneva wrote to the Applicant, confirming her separation from service as from 1 June 1989. The Applicant was paid a termination indemnity in accordance with annex III, paragraph (a), of the Staff Regulations.

The Joint Appeals Board adopted its report on 10 July 1991. Its conclusions and recommendation read as follows:

> "40. In view of the foregoing, the Panel concludes that the decision by UNICEF to abolish a number of posts (including that of the Appellant's) as of 1 January 1989, in view of the restructuring of the Geneva office, was a valid exercise of discretionary power within the meaning of staff regulation 9.1(a).
>
> 41. The Panel also concludes that the decision to terminate the Appellant's permanent appointment was a direct result of the abolition of her post and was not linked with the disciplinary proceedings instituted in her case for an incident which took place seven weeks after she was already apprised of the possible abolition of her post; and that the contested decision was not taken with improper motives or abuse of power.
>
> 42. The Panel finally concludes that the Administration had duly observed the conditions for terminating permanent appointments for abolition of post or reduction of staff, as laid down in staff rule 109.1(c) and in UNICEF administrative instruction CF/AI/1986-10.

43. Accordingly, the Panel makes no recommendation in support of the appeal."

On 15 August 1991, the Officer-in-Charge for Administration and Management transmitted to the Applicant a copy of the Joint Appeals Board report and informed her that the Secretary-General, having re-examined her case in the light of the Board's report, had decided to maintain the contested decision and to take no further action on the case.

On 17 February 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The necessities of the service did not require the abolition of her post.

2. The abolition of the aforesaid post constituted an abuse of power, as it was merely a pretext for getting rid of the Applicant.

3. The Administration has not really abolished the Applicant's post, since it has neither waived the performance of certain tasks, nor terminated the staff member who was to perform them, in order to assign them to one or more other staff members.

4. The Administration has not observed staff rule 109.1(c), which provides that the Administration must seek to reassign an official whose post has been abolished. This rule has not been observed.

Whereas the Respondent's principal contentions are:

1. The necessities of the service required the Administration to abolish the Applicant's post, among others.

2. The decision of the UNICEF Administration to abolish the Applicant's post in the context of the restructuring of its Geneva office was a valid exercise of its discretionary powers within the meaning of staff regulation 9.1(a).

3. The abolition of the post, leading to the Applicant's termination, was due to the restructuring of the UNICEF office in Geneva.

4. The provisions of administrative instruction CF/AI/1986-10 have been observed by the Administration.

The Tribunal, having deliberated from 9 June to 1 July 1993, now pronounces the following judgement:

I. The Applicant, a former staff member of the United Nations Children's Fund (UNICEF), separated from service on 31 May 1989, following the abolition of her post. She requests the Tribunal to revoke the decision of 13 April 1989, which confirmed that of 30 November 1988. Accordingly, on the one hand, she requests the Tribunal to order UNICEF to reinstate her in her post and to assign to her tasks corresponding to her qualifications. On the other hand, she requests that she be awarded a fair amount, as costs. Lastly, she requests that she be awarded a sum as compensation for the material and moral injuries which she has suffered.

II. The Respondent argues that it was the necessities of the service which required the UNICEF Administration to abolish a number of posts, including that of the Applicant. The Respondent argues further that the Administration's decision to abolish the Applicant's post in the context of the restructuring of its Geneva office constituted a valid exercise of its discretionary power within the meaning of staff regulation 9.1(a). Lastly, the Respondent maintains that the provisions of administrative instruction CF/AI/1986-10 concerning the modalities of application of the principles contained in staff rule 109.1(c) have been duly observed.

III. The Tribunal notes that on 7 March and 30 November 1988, the Director of UNICEF Geneva had informed the staff that posts would be

abolished as from 1 January 1989. The Tribunal finds that the decision not to maintain the Applicant's post was taken for administrative reasons and was free of any bias.

The Tribunal further notes that, on that occasion, the Applicant received prior notice, as provided for under staff rule 109.3.

IV. The Tribunal notes, moreover, that, having been notified of the abolition of her post, the Applicant applied, unsuccessfully, for several posts; her lack of success was due to the inadequacy of both her linguistic skills and her qualifications, as evidenced by the letter from the Deputy Director dated 17 March 1989.

V. The Tribunal finds that, as stated by the Respondent, it was indeed the necessities of the service that justified the termination of the Applicant's employment, rather than the incident which gave rise to a disciplinary proceeding; that incident, moreover, occurred well after the Applicant had been informed of the abolition of her post. Furthermore, as the Tribunal has frequently held, it will not substitute its judgement for that of the Administration in respect of the reorganization of service.

Thus, in the case under review, the provisions of staff regulation 9.1(a) and of the above-mentioned administrative instruction, which specify the modalities of application of staff rule 109.1(e), have been observed.

Furthermore, the Applicant has presented no evidence that the Administration's decision to abolish her post constituted an abuse of power, or that such a decision was taken for reasons other than the interests of the service.

VI. For the foregoing reasons, the Tribunal rejects the application.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Mikuin Leliel BALANDA
Member

Hubert THIERRY
Member

Geneva, 1 July 1993

R. Maria VICIEN-MILBURN
Executive Secretary